

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Douglas Dynamics, LLC, d/b/a/ Western  
Products,

Plaintiff,

v.

B&P SUPPLY, INC.,

Defendant

CIVIL ACTION  
Docket No:

**04 cv 11467 RCL**

COMPLAINT

MAGISTRATE JUDGE *Collings*

Plaintiff Douglas Dynamics, LLC d/b/a Western Products hereby complains against  
Defendant B& P Supply, Inc. as follows:

PARTIES

1. Plaintiff Douglas Dynamics, LLC, d/b/a Western Products ("Western") is a  
Limited Liability Company formed under the laws of the State of Delaware, with its principal  
place of business in Milwaukee, Wisconsin.

2. Defendant B&P Supply, Inc. ("B&P") is a Massachusetts corporation with a  
principal place of business in Pittsfield, Berkshire County, Commonwealth of Massachusetts.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332, as this  
action is between citizens of different states and the amount in controversy, exclusive of interest  
and costs, exceeds the sum of \$75,000.

4. Venue lies in this district pursuant to 28 U.S.C. § 1391(a) and (b) because B&P's  
primary place of business is located in this district and because a substantial part of the events  
giving rise to this action occurred in this district.

**COUNT I - BREACH OF CONTRACT**

5. Western manufactures and sells snow and ice removal equipment and accessories such as snowplows and snowplow assemblies.

6. B&P is a distributor that purchases snow and ice removal equipment and accessories from Western for resale to consumers.

7. During the period from November 2003 through March 2004, Western sold and delivered to B&P, and B&P purchased and accepted from Western, snow and ice removal equipment and accessories with a sales price of \$118,727.12.

8. A true and accurate copy of B&P's statement of account as of May 22, 2004 is attached hereto as Exhibit A.

9. The terms of sale governing the purchases made by B&P required payment in full within 30 days of the invoice date, and further provided for a 1.5% service charge per month on amounts overdue and unpaid.

10. Despite repeated demands by Western that B&P make payment on the outstanding invoices, B&P has failed and refused, and continues to fail and refuse, to make such payment to Western.

11. As of May 22, 2004, approximately \$3,349.95 of unpaid interest has accrued with respect to the amounts overdue and unpaid by B&P.

12. Pursuant to the terms of sale that governed the purchases made by B&P, interest continues to accrue on the amount of \$118,727.12 at the rate of 1.5% per month.

13. B&P has breached its agreement with Western for purchase of the snow and ice removal equipment and accessories by failing and refusing to make payment to Western of the outstanding amounts due.

14. Western has been damaged by B&P's breach of the agreement.

WHEREFORE, Western requests that this Court enter judgment in its favor against B&P in the amount of \$122,077.07 plus interest on and after May 22, 2004 at the rate of 1.5% per month on the amount of \$118,727.12, plus costs of suit and interest permitted by statute, and for such other and further relief as the Court deems appropriate.

**COUNT II – ACTION ON THE PRICE**

15. Western repeats and realleges each and every allegation contained in paragraphs 1 through 14 of this Complaint as though fully set forth herein.

16. The sales of Western's snow and ice removal equipment and accessories to B&P were sales of goods within the meaning of Article 2 of the Uniform Commercial Code in effect in both Massachusetts and Wisconsin. *See* M.G.L.A. 106 § 2-105 (2003); Wis. Stat. § 402.105 (2003).

17. The price of the goods that Western sold and delivered to B&P, and which B&P purchased and accepted from Western, totals \$118,727.12.

18. To date, B&P has failed and refused to make payment to Western on the amount due.

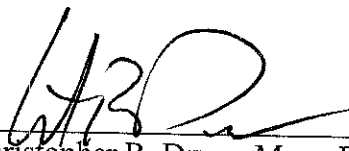
19. As of May 22, 2004, approximately \$3,349.95 of unpaid interest has accrued with respect to the amounts overdue and unpaid by B&P.

20. Pursuant to the terms of sale that governed the purchases made by B&P, interest continues to accrue on the amount of \$118,727.12 at the rate of 1.5% per month.

21. Pursuant to Uniform Commercial Code, Western is entitled to recover the price of the goods accepted by B&P, together with incidental damages. *See* M.G.L.A. 106 §§ 2-109, 2-710 and Wis. Stat. §§ 402.709, 402.710.

WHEREFORE, Western requests that this Court enter judgment in its favor against B&P in the amount of \$122,077.07 plus interest on and after May 22, 2004 at the rate of 1.5% per month on the amount of \$118,727.12, plus costs of suit and interest permitted by statute, and for such other and further relief as the Court deems appropriate.

Dated: June 24, 2004

  
\_\_\_\_\_  
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*Attorneys for Plaintiff Douglas Dynamics, LLC  
d/b/a/ Western Products*

JS 44 (Rev. 3/99)

**CIVIL COVER SHEET**

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

DOUGLAS DYNAMICS, LLC D/B/A WESTERN PRODUCTS

**DEFENDANTS**

B&amp;P SUPPLY, INC.

(b) County of Residence of First Listed Plaintiff MILWAUKEE  
(EXCEPT IN U.S. PLAINTIFF CASES)County of Residence of First Listed BERKSHIRE

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Christopher R. Drury, Esq.  
Pierce Atwood  
One Monument Square  
Portland, Maine 04101 (207) 791-1100

Attorneys (If Known)

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**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 ☒ 1 DEF Incorporated or Principal Place of Business in This State ☐ 4 DEF
- Citizen of Another State ☐ 2 ☐ 2 DEF Incorporated and Principal Place of Business in Another State ☒ 5 ☐ 5 DEF
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6 DEF

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIW C/DIW W (405 (g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

**V. ORIGIN** (PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Breach of contract action on the price MGLA 106 Sections 2-109, Wis. Stat. Sec. 402.709

**VII. REQUESTED IN COMPLAINT:**
☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$**  
**\$122,104.00**

 CHECK YES only if demanded in complaint:  
**JURY DEMAND:** ☐ Yes ☒ No
**VIII. RELATED CASE(S) IF ANY**JUDGE  
E

DOCKET NUMBER

DATE \_\_\_\_\_ SIGNATURE OF ATTORNEY OF RECORD \_\_\_\_\_

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Douglas Dynamics, LLC d/b/a Western Products v. B&P Supply
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- ☐ I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- ☐ II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820\*, 830\*, 840\*, 850, 890, 892-894, 895, 950. \*Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- ☒ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.

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3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐ NO ☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐ NO ☒

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐ NO ☐

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐ NO ☒

7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES ☒ NO ☐

- A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division ☐ Central Division ☐ Western Division ☒

- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☐ Central Division ☐ Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐ NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Christopher R. Drury, Esq.ADDRESS Pierce Atwood, One Monument Square, Portland, Maine 04101TELEPHONE NO. (207) 791-1100